

7 April 2017

Ms Nicole Ross
Director, Market Evolution and Access Section
Infrastructure Regulation Division
Australian Competition and Consumer Commission
360 Elizabeth Street
Melbourne 3000

By email: superfastbroadbandinquiry@accc.gov.au
cc: nicole.ross@accc.gov.au

Dear Nicole,

ACCC further consultation on pricing for the SBAS and LBAS final access determinations

nbn welcomes the opportunity to comment on the 'ACCC further consultation on pricing for the SBAS and LBAS final access determinations' (the Further Consultation paper). Building on our submissions in response to the September 2016 Consultation Paper and the January 2017 Draft Decision, our comments on the Further Consultation Paper are as set out below.

Treatment of the RBS charge in benchmark prices

- In the Further Consultation Paper, the ACCC proposes that the FAD should allow the RBS charge to be added on top of the benchmark price for LBAS/SBAS, which is a reversal of the approach taken in the Draft Decision.
- nbn reiterates its comment in response to the Draft Decision that "the FADs need to be based on the legislation as it applies at the time the ACCC makes its final decision and it is not useful for the FADs to anticipate the nature and extent of future legislative changes."¹
- Having said this, nbn makes the following observations in regard to the treatment of the (proposed) RBS charge in benchmark prices.

¹ nbn, submission in response to Draft Decision, 17 February 2017, p.1.



- In regard to the extent to which **nbn**'s wholesale prices currently embed cross-subsidies to fund fixed wireless and satellite services, the Government has stated that:

The cross-subsidies which are currently embedded in NBN Co's wholesale prices will be replaced by transparent funding provided via contributions sourced from owners of high-speed broadband access networks....² [Emphasis added]

- **nbn** is concerned by the assertions (made without any evidence or analysis whatsoever) that "...the existing prices for [**nbn**'s] 25/5 Mbps service do not contain a significant cross-subsidy" and that "most or all of the cross-subsidy could be recovered from higher product tiers and usage..."
- In regard to whether **nbn**'s SAU (and the Long Term Revenue Constraint Methodology in particular) provides **nbn** with a unique ability to recover cross-subsidies over time that SBAS/LBAS providers cannot replicate in respect of recovering the RBS charge, this is a falsehood – SBAS/LBAS providers are much less regulated than **nbn** in general and the ACCC's proposed anchor product pricing approach for the SBAS/LBAS FADs in particular means that SBAS/LBAS providers have greater flexibility than **nbn** in regard to how they adjust their pricing of other products (including higher speed tiers) over time.
- In regard to whether the draft decision could potentially push SBAS/LBAS providers' prices below costs, it is important to remember that these providers will receive revenue from both AVC and CVC and that, as noted by the ACCC in its September 2016 Consultation Paper, "the SBAS and LBAS are confined largely to city areas or discrete geographic areas that are likely to involve lower costs to serve."³
- In regard to the impact on end users (whether served by **nbn** or another superfast broadband network) of the introduction of the RBS charge, the Government's policy position is clear:

*The 2014 policy paper indicated there will be no additional costs to consumers as a whole relative to current **nbn** pricing – an opaque part of the costs of the **nbn** will be made explicit, and would be spread across all consumers of comparable broadband services. The paper also indicated that the Government would provide the ACCC with sufficient powers to monitor the introduction of these arrangements.⁴ [Emphasis added]*

- More generally, in regard to ACCC's comments on the practical effect of allowing the RBS charge to be added to the **nbn** benchmark prices⁵, **nbn** notes that if an area is served only by an LBAS/SBAS network, access seekers will not have a choice between the relevant LBAS/SBAS network and the **nbn**TM network. In such cases, access seekers may have very limited countervailing power with which to negotiate with the LBAS/SBAS network owner.

² Telecommunications Regulatory and Structural Reform, December 2014, p.6

³ ACCC, Consultation Paper, September 2016, p.17.

⁴ Department of Communication and the Arts, Regulation Impact Statement – Establishing an ongoing funding arrangement for **nbn**'s fixed wireless and satellite networks, December 2016, p.28.

⁵ ACCC, ACCC further consultation on pricing for the SBAS and LBAS final access determinations (Further Consultation paper), March 2017, p.3



Applying RSP-specific discounting to SBAS and LBAS CVC charges

- The ACCC states in its Further Consultation paper that it expects “that in order to maintain appropriate regulatory oversight of CVC prices it will be necessary to require **NBN** Co to provide the CVC discounting information to the ACCC via a record keeping rule (RKR), which we would use [to] publish the discounts and reference in the FADs.”⁶
- **nbn** considers that the ACCC may have misunderstood both **nbn**’s previous submission in relation to how **nbn**’s new dimension-based discount (DBD) arrangement should be accounted for in the FADs and also the operation of **nbn**’s regulatory framework.
 - The table of discounts **nbn** makes available is published on **nbn**’s website as part of **nbn**’s Standard Form of Access Agreement (SFAA).⁷
 - From 1 June 2017, **nbn**’s DBD arrangement is intended to change so that the discount available to an RSP is based on that RSP’s own dimensioning (CVC TC-4 per AVC TC-4) rather than industry average dimensioning. DBD by RSP, as compared to DBD by industry average, will provide better incentives for RSPs to dimension to the needs of their individual end user bases in a timely manner and thereby improve the end user experience.
 - In the context of the FADs, the application of the DBD by RSP discounts should be based on an RSP’s own dimensioning on the relevant SBAS/LBAS network rather than that RSP’s dimensioning on the **nbn**TM network – it may not be reasonable to assume that dimensioning will be the same on **nbn** and non-**nbn** networks for an individual RSP, or on average across all RSPs. The ACCC should make appropriate arrangements to obtain this information from the relevant providers of LBAS and SBAS.
 - Imposing an ‘anticipatory’ RKR on **nbn** to address a problem that does not currently exist and is unlikely to ever exist, would appear to be a misuse of the ACCC’s RKR power. **nbn** is troubled by the casual manner in which this option has been articulated and unclear as to how this would even be possible (in this context, where the ACCC is regulating other providers).

Rebalancing of the Telstra price benchmarks

- In the Further Consultation Paper, the ACCC refers to the “expected incorporation of the South Brisbane and Velocity networks into the NBN”.⁸ **nbn** reiterates the points made in our 26 October 2016 and 17 February 2017 submissions – “it is important to note that Telstra and **nbn** have not entered into a binding

⁶ ACCC, Further Consultation Paper, March 2017, p.5.

⁷ See <http://www.nbnco.com.au/content/dam/nbnco2/documents/sfaa-cvc-dimension-based-discount-notice-effective-1-June-2017-2016-20170227.pdf>

⁸ ACCC, Further Consultation Paper, March 2017, p.3.



agreement for any such transfers"⁹ and "the status quo may continue for a currently unknown period (which is not that the networks 'will be transferred' or 'are to be transferred' to **nbn** but simply that they may be)."¹⁰

SBAS small provider exemption

- In the Further Consultation Paper, the ACCC states that it intends to undertake further modelling work on the threshold for the SBAS small provider exemption – the ACCC had proposed in the Draft Decision that this threshold should be set at 12,000 end user SBAS and LBAS services.
- **nbn** remains unclear as to how the small provider exemption relates to the ACCC's statement in the Draft Decision that "In making this draft decision a key objective has been that retail service providers (RSPs) and end users supplied via SBAS and LBAS networks should not be any worse off than if they were supplied by the NBN."¹¹
- Related to this, as noted in **nbn**'s response to the September 2016 Consultation Paper, "why should a small fixed line monopoly be any less of a concern than a large fixed line monopoly in terms of its potential implications for promoting the LTIE?"¹²

If you would like to discuss any aspect of this letter, please contact Matthew Cole, General Manager Access Regulation at matthewcole@nbnc.com.au or on (03) 9601 5231 to arrange a suitable time.

Yours sincerely

A handwritten signature in black ink that reads 'Caroline Lovell'.

Caroline Lovell
Chief Regulatory Officer

⁹ **nbn**, submission in response to Discussion Paper, 26 October 2016, p.3.

¹⁰ **nbn**, submission in response to Draft Decision, 17 February 2017, p.3.

¹¹ ACCC, Draft Decision, January 2017, p.7.

¹² **nbn**, submission in response to ACCC Discussion Paper, 26 October 2016, p.3.